

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 1:05-CR-249

v.

HON. ROBERT HOLMES BELL

JUAN MARISCAL-MAGANA,

Defendant.

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MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant's Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. §3582(c)(2) (docket #40). Based on a review of defendant's motion, the Sentence Modification Report, submission by defense counsel, and the original criminal file, the Court has determined that the motion should be denied for the following reason(s):

Defendant was originally indicted on a charge of Possession with Intent to Distribute Cocaine Base and Cocaine, which carried a statutory term of imprisonment of 5 to 40 years. Defendant pled guilty to a superseding information charging Interstate Travel in Aid of Racketeering Enterprises. The guideline range was 70 to 87 months, but the charge carried a statutory maximum sentence of 60 months. Defendant received a sentence of 60 months. The amended guideline calculation results in a guideline range of

57 to 71 months. However, the statutorily authorized maximum sentence of 60 months still applies. Had the amended guideline calculation been in affect at the time of sentencing on April 3, 2006, the Court is confident it would have imposed the same sentence of 60 months.

ACCORDINGLY, defendant Motion for Modification or Reduction of Sentence is hereby **DENIED**.

Date: January 7, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE